Annex C

Summary of Comments and Responses

Issue	Summarized Comment	CSA Response
Inconsistencies between the notice requirements in proposed sections of National Instrument 33-105 *Underwriting Conflicts* (NI 33-105), exemptive relief orders granted to a number of large institutional Canadian and foreign dealers (Wrap Exempt Dealers) from Canadian-specific disclosure requirements that must be included in a wrapper (the Discretionary Orders) and the disclosure requirements in proposed MI 45-107 and OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (OSC Rule 45-501)	The proposed disclosure requirement in MI 45-107 does not mesh with the notice requirement of the proposed amendments to NI 33-105. In addition, the Discretionary Orders permit the Wrapper Exempt Dealers to provide a notification of the existence of statutory rights of action to permitted clients instead of a description of the statutory rights of action. Proposed MI 45-107 and proposed OSC Rule 45-501 would only provide for alternative means by which the statutory rights of action could be described. This presents two difficulties: • The statutory rights of action differ among the four provinces that have disclosure requirements for the statutory rights of action, resulting in excessively lengthy disclosures; and • Although a fully comprehensive description of the statutory rights of	The relevant jurisdictions (Saskatchewan, Nova Scotia and New Brunswick) support only requiring notification that statutory rights exist. Proposed standardized language (which is identical to that proposed in the amendments to OSC Rule 45-501) will be added to section 3 of MI 45-107.

	action could be provided, it would be less useful to investors than a description of statutory rights of action tailored to the particular offering.	
	Two commenters submitted that, the proposed amendments to NI 33-105 and proposed MI 45-107 would work best if the Canadian disclosure requirements could be satisfied though short standardized disclosure in the offering document. NI 33-105 achieves this in part by enabling a notice to permitted clients to be provided within the offering document. However, this notice requirement does not mesh with the proposed disclosure requirement in MI 45-107 which would continue to require a description of the statutory rights of action available in three provinces. The required disclosure should be limited, at most, to notification of the existence of statutory rights of action, as is the case of the notices provided by dealers relying on discretionary orders, instead of a description of these rights.	

	We understand from our discussions with dealers that they favour the option proposed in NI 33-105 to include a short Canadian section in an offering document rather than sending out and tracking separate notices to Canadian investors. We are concerned, however, that dealers will be reluctant to use this option if they are required to include the same lengthy description of statutory rights of action included in Canadian wrappers in order to comply with requirements currently applicable in Ontario, Saskatchewan, New Brunswick and Nova Scotia. Requiring instead only a notification of the existence of statutory rights of action, as required for a prospectus filed in Canada, would eliminate this potential obstacle thereby facilitating access to distributions of foreign securities for Canadian permitted clients.	
Remove limitation of Exemptions to Non-Reporting Issuers	The exemptions in MI 45-107 (as well as NI 33-105) are restricted to issuers that are non-reporting issuers in Canada (definition of "designated foreign security").	We do not agree that the definition of "designated foreign security"[1] should include securities issued by reporting issuers. In our view, the policy basis for excluding reporting issuers is the fact

[1] Note that the term "eligible foreign security" is now used instead of "designated foreign security".

	However, because a non-Canadian entity that is a reporting issuer may be entitled to make its filings in paper format, checking the SEDAR website alone is not sufficient to verify that a non-Canadian issuer is not a reporting issuer in any Canadian jurisdiction. A dealer must also check the reporting issuer lists maintained by each of the 13 Canadian provincial and territorial securities regulatory authorities. We submit that there is no policy basis for such restriction. The various other restrictions included in the definition of "designated foreign security" achieve the purpose of the proposed exemptions.	that by choosing to become reporting issuers, issuers take active steps to engage with and participate in the Canadian securities regulatory regime and as a result such issuers should be required to comply with Canadian securities requirements. In our view, issuers should know if they are a reporting issuer in a Canadian jurisdiction, as this will impact various requirements that must be complied with under Canadian securities law.